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HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 584

SEABOARD AIR LINE RAILROAD COMPANY,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee,

INTERSTATE COMMERCE COMMISSION,
ATLANTIC COAST LINE RAILROAD COMPANY,
Intervenors.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

JURISDICTIONAL STATEMENT AND APPENDICES.

JAMES B. MCDONOUGH, JR.,
Counsel for Plaintiff-Appellant,
Seaboard Air Line Railroad Company Building,
Plume and Granby Streets,
Norfolk 10, Virginia.

CHARLES T. ABELES,
Of Counsel.

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Jurisdictional Statement.

This is an appeal by the Seaboard Air Line Railroad Company, the plaintiff below, from a judgment of the United States District Court for the Eastern District of Virginia, dismissing the complaint in an action to enjoin and set aside an order of the Interstate Commerce Commission.

The case involves the power of the Interstate Commerce Commission to require the appellant, without its consent, to embrace in certain through routes substantially less than

the entire length of its railroad which lies between the termini of such through routes, upon the complaint of another railroad company, the intervenor Atlantic Coast Line Railroad Company.

A novel factual situation is involved, in that the Interstate Commerce Commission had in a prior proceeding authorized the abandonment of a line of railroad belonging to the intervenor Atlantic Coast Line Railroad Company, upon which is located an interchange point for traffic moving to and from the plaintiff and the intervenor Atlantic Coast Line Railroad Company over through routes and upon joint rates. The plaintiff was not a party to the abandonment proceeding, and the Atlantic Coast Line Railroad Company has never exercised the abandonment authority, now more than four years old.

The Court below found that the order of the Interstate Commerce Commission in the complaint proceeding, which is the order under attack upon this appeal, did not create any new through routes and, further, that even if it did, the Commission had met the requirements of the Interstate Commerce Act in that connection.

This Jurisdictional Statement is submitted pursuant to the Rules of this Court to show the basis of this Court's jurisdiction of the appeal and that a substantial question is presented.

Opinion Below.

The opinion of the United States District Court for the Eastern District of Virginia is not yet reported. It is dated December 10, 1954, and a copy is attached hereto as Appendix A-1. The opinion was written by Circuit Judge Armistead M. Dobie, and concurred in by District Judges Sterling Hutcheson and Walter E. Hoffman.

The order of the Interstate Commerce Commission sought to be enjoined and set aside was made in a complaint proceeding brought against the appellant by the Atlantic Coast Line Railroad Company and given Docket No. 30882. That order is dated July 30, 1954, and a copy thereof is attached hereto as Appendix A-2.

By order dated October 11, 1954, in Docket No. 30882, the Interstate Commerce Commission modified the order of July 30, 1954, with respect to its effective dates, and a copy of the order of October 11, 1954, is attached hereto as Appendix A-3.[1]

In Docket No. 30882 the first report of the Interstate Commerce Commission, by Division 3, is dated September 2, 1952, and is reported as *Atlantic Coast Line Railroad Company* v. *Seaboard Air Line Railroad Company*, 286 I. C. C. 669, and a copy of that report is attached hereto as Appendix A-4.

The abandonment proceeding, to which the appellant was not a party, was given Finance Docket No. 16872. The report of the Interstate Commerce Commission in that proceeding was dated December 18, 1950. It is not printed in the Commission's reports, although it appears as *Atlantic Coast Line Railroad Company Abandonment*, 275 I. C. C. 810 (8th case), but a copy of that report (and Certificate) is attached hereto as Appendix A-5.

The appellant's petition for leave to intervene in the abandonment proceeding (Finance Docket No. 16872) was denied by order of the Interstate Commerce Commission dated February 2, 1953, and a copy of that order is attached hereto as Appendix A-6.

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[1] By order dated December 13, 1954, the Court below (such order being signed by each member of the Court) enjoined and restrained the enforcement of the order of the Interstate Commerce Commission of July 30, 1954, as amended October 11, 1954, during the pendency of this appeal.

In the complaint case, Docket No. 30882, the proceedings were reopened and there was a report of the Commission on further hearing, likewise by Division 3, dated January 11, 1954, reported as *Atlantic Coast Line Railroad Company* v. *Seaboard Air Line Railroad Company,* 291 I. C. C. 329, and a copy of that report is attached hereto as Appendix A-7.

In the complaint case, Docket No. 30882, a copy of the order of the Commission, by Division 3, dated January 11, 1954, is attached hereto as Appendix A-8.

By order dated May 4, 1954, in the same case, the full Commission denied the petition of appellant for reconsideration and other relief, and a copy of that order is attached hereto as Appendix A-9.

By separate order likewise dated May 4, 1954, in the same case, the full Commission vacated the order of January 11, 1954, and entered a new order, and a copy of the new order of May 4, 1954, is attached hereto as Appendix A-10.

By order dated July 30, 1954, in the same case, the full Commission denied the further petition of appellant for rehearing and other relief, and a copy of that order is attached hereto as Appendix A-11.

By separate order likewise dated July 30, 1954, the full Commission vacated the order of May 4, 1954, and a copy of that order of July 30, 1954, is, as above stated, attached hereto as Appendix A-2.

The full text of the orders of January 11, 1954 (Appendix A-8) of May 4, 1954 (Appendix A-10), and of July 30, 1954 (Appendix A-2) is deemed to be of importance because of the variations in the language of the three orders.

Jurisdiction.

This suit was brought under 28 U. S. C. §§1336, 1398, 2284 and 2321-2325 to enjoin, set aside, annul and suspend an order of the Interstate Commerce Commission. The judgment of the District Court dismissing the complaint was dated and entered December 10, 1954. No petition for rehearing was filed. The notice of appeal was filed December 13, 1954, in the United States District Court for the Eastern District of Virginia. The statutory provision believed to confer on this Court jurisdiction of the appeal is 28 U. S. C. §1253. The following cases are believed to sustain the jurisdiction; *Thompson* v. *United States,* 343 U. S. 549; *United States* v. *Great Northern Railway Co.,* 343 U. S. 562, and *Pennsylvania R. Co.* v. *United States,* 323 U. S. 588.

Questions Presented.

The questions presented by the appeal, as set forth in the notice of appeal, are as follows:

1.

Did the District Court err in holding that the order of the Interstate Commerce Commission of July 30, 1954, as modified by the order of said Commission of October 11, 1954, did not have the effect of establishing a new through route between the points named in said order?

2.

Did the District Court err in holding that the said order of the Commission of July 30, 1954, as modified, was authorized by and in conformity with the provisions of Section 3(4) of the Interstate Commerce Act?

3.

If said order of July 30, 1954, as modified, does have the effect of establishing a new through route between the points named in said order, was said order based upon the findings prescribed by Section 15(4) of the Interstate Commerce Act?

4.

If said order of the Interstate Commerce Commission was based upon the findings prescribed by Section 15(4) of the Interstate Commerce Act, were such findings supported by substantial evidence?

5.

Did the District Court err in finding that if the abandonment authority of the Atlantic Coast Line Railroad Company granted in Finance Docket No. 16872 be exercised, an interchange point other than Thalmann would be necessary for the traffic here involved?

6.

Did the District Court err in finding that the abandonment authority of the Atlantic Coast Line Railroad Company granted in Finance Docket No. 16872 was and is valid?

Statutes Involved.

Sections 3(4), 15(3) and 15(4) of the Interstate Commerce Act, as amended (49 U. S. C. §§ 3(4), 15(3) and 15(4)) which are set forth in Appendix B hereto.

Statement.

The facts material to the consideration of the questions presented cannot be readily understood without reference to a map. There is attached hereto marked Appendix C an

outline map showing the principal points, places, and lines of railroad involved in this action.

The appellant, hereinafter called the Seaboard, and the Intervenor, Atlantic Coast Line Railroad Company, hereinafter called the Coast Line, both have extensive trackage in the Florida peninsula. The Coast Line has its single line route to and from points in the Florida peninsula through Jacksonville to and from Atlanta and Birmingham.

The rail traffic involved in this proceeding is traffic originating and terminating on the Seaboard that moves to and from points in Florida south of Jacksonville, and the Atlanta and Birmingham gateways, and beyond. Such Seaboard traffic moves to and from points in the Florida peninsula through Baldwin, and does not go into Jacksonville.

The Seaboard has three principal routes for the traffic in question which, in reaching Atlanta and Birmingham, are the following:

To and from Birmingham

1. Baldwin—Tallahassee—Montgomery—Birmingham (moving between Montgomery and Birmingham over the Louisville and Nashville Railroad Company).

2. Baldwin—Tallahassee—Columbus—Birmingham (moving between Columbus and Birmingham over the Central of Georgia Railway Company).

To and from Atlanta

1. Baldwin—Savannah—Vidalia—Macon—Atlanta (moving between Vidalia and Macon over the Macon, Dublin and Savannah Railroad Company, and between Macon and Atlanta over either the Central of Georgia Railway Company or the Southern Railway Company).

The Seaboard owns all of the capital stock of the Macon, Dublin and Savannah Railroad Company, which owns the

line of railroad between Vidalia and Macon. That Company has outstanding in the hands of the public $1,253,000, principal amount of First Mortgage 5% Bonds, which are not guaranteed by the Seaboard as to either principal or interest. The Macon, Dublin and Savannah Railroad Company is, however, an "intermediate railroad operated in conjunction and under a common management or control" with the Seaboard, within the meaning of Section 15(4) of the Interstate Commerce Act.

The line of the Coast Line extending from Brunswick, through Anguilla, Thalmann, Alma and Sessoms to Atlanta and Birmingham was formerly the Atlanta, Birmingham & Coast Railroad Company, and prior to that it was the Atlanta, Birmingham & Atlantic Railway Company. Early in this century (the testimony was about 1905) when that line of railroad did not reach Jacksonville, and when it was not owned or controlled by the Coast Line, the Seaboard entered into through routes and joint rates with that company for the movement of traffic to and from the Florida peninsula and the Atlanta and Birmingham gateways, and beyond, with interchange at Thalmann.

The Coast Line acquired control of the AB&C on January 1, 1927, and took title to its properties effective January 1, 1946. (*Reorganization of the A. B. & A. Ry.*, 117 I. C. C. 181 (October 26, 1926), and 117 I. C. C. 439 (December 21, 1926), and *Atlantic Coast Line R. Co., et al. Purchase,* 261 I. C. C. 820 (December 12, 1945)).

The Seaboard heretofore entered into similar through routes and joint rates with the Southern Railway Company (hereinafter called the Southern), with interchange at Everett, for the traffic in question (i. e., to and from points in Florida south of Jacksonville and the Atlanta and Birmingham gateways and beyond), and such through routes and joint rates are presently in effect with the Southern, via Everett.

For the traffic in question, the Seaboard does not have, and has never had, through routes and joint rates with either the Coast Line or the Southern, via Jacksonville.

The route via the Coast Line through Thalmann did not attract a large volume of the traffic in question. During the year 1952, for example, only 1,743 cars moved through Thalmann in conjunction with the Coast Line, while 73,662 cars moved through the Montgomery, Columbus and Vidalia (Macon) gateways, over the Seaboard's longer single line routes upon which it retained its long haul and greater revenue, in conjunction with the Central of Georgia Railway Company and the Louisville and Nashville Railroad Company and, to some extent, over the Southern between Macon and Atlanta.

The Coast Line applied to the Commission for, and secured, authority to abandon the portion of the old AB&C between Anguilla and Alma, the report of the Commission being dated December 18, 1950 (Appendix A-5). That authority has never been exercised.

The Seaboard expressed a willingness to join with the Coast Line in through routes and joint rates for the traffic in question, with interchange at Bladen, if and when the Coast Line should exercise that abandonment authority. There are no facilities at Bladen for such interchange, but such facilities could be constructed at moderate expense.

The Coast Line declined to accept Bladen, and demanded that the through routes and joint rates in effect through Thalmann should be put in effect through Jacksonville, and offered to allow the Seaboard the Thalmann divisions on such traffic when interchanged at Jacksonville. The Seaboard declined. The Seaboard's revenue on traffic moving through its principal gateways of Montgomery, Columbus and Vidalia (Macon) is greater than its revenue

on traffic moving through Thalmann (or through Jacksonville, on the Coast Line's suggested basis).

The Coast Line, instead of exercising its abandonment authority, filed a formal complaint with the Commission (Docket No. 30882) and the Commission has now ordered the Seaboard to make provisions for the interchange at Jacksonville of all of the traffic in question at the joint rates and divisions presently in effect via Thalmann.

The "traffic in question" is not the comparatively few cars that heretofore moved through Thalmann. On the contrary it is all of the traffic moving to and from Seaboard stations in Florida and the Atlanta and Birmingham gateways and beyond. If the Commission's order of July 30, 1954, is allowed to stand, the Coast Line will be in a position to take Seaboard originated traffic at Jacksonville but the Seaboard will have no corresponding privilege of soliciting Coast Line originated traffic at Jacksonville. The same preference to the Coast Line will exist with respect to southbound movements.

The Commission seemed to think, at one point, that it could limit the volume of that traffic that might move through Jacksonville to the volume that heretofore moved through Thalmann. The order of January 11, 1954 (Appendix A-8) would have required the Seaboard to join with the Coast Line in establishing and maintaining:

> "* * * provisions for the interchange at Jacksonville, Fla., of traffic between points on the lines of the defendant south of Jacksonville, on the one hand, and points on the lines of the complainant from Waycross, Ga., to Atlanta, Ga., and Birmingham, Ala., and points on other lines north and west of Atlanta and Birmingham, on the other, at the joint rates and divisions presently in effect via Thalmann, Ga., * * *."

The corresponding provisions of the order of May 4, 1954 (Appendix A-10) with the added words in italics, read as follows:

> "* * * provisions for the interchange at Jacksonville, Fla., of *all* traffic, *now interchanged at Thalmann, Ga.,* between points *in Florida* on the lines of the defendant south of Jacksonville, *Fla.,* on the one hand, and points on the lines of the complainant from Waycross, Ga., to Atlanta, Ga. and Birmingham, Ala., and points on other lines north and west of Atlanta and Birmingham, on the other, at the joint rates and divisions presently in effect via Thalmann, Ga.,* * *."

The order of July 30, 1954 (Appendix A-2) eliminated the words "now interchanged at Thalmann, Ga.," and inserted the words shown in italics in the corresponding provisions of that order, as follows:

> "* * * provisions for the interchange at Jacksonville, Fla., of all traffic between points in Florida on the lines of the defendant south of Jacksonville, Fla., *from and to which joint rates are presently in effect via Thalmann, Ga.,* on the one hand, and points on the lines of the complainant from Waycross, Ga., to Atlanta, Ga., and Birmingham, Ala., and points on other lines north and west of Atlanta and Birmingham, on the other, at the joint rates and divisions presently in effect via Thalmann, Ga., * * *."

The Commission erroneously assumed that the mere grant of the abandonment authority to the Coast Line made it necessary to have a new point of interchange and so stated in its report of January 11, 1954.[2] There was no

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[2] Appendix A-7, p. 2; "As stated in the prior report, the necessity for the establishment of a new interchange point for the traffic handled jointly by the Coast Line and the Seaboard between Seaboard stations south of Jacksonville and points north and west of Waycross arises from authority granted by the Commission in

such necessity for two reasons. The first is that the Coast Line has not yet exercised the abandonment authority (if still valid) and the routes through Thalmann are open today. The second is that even if the abandonment authority was exercised and the routes through Thalmann were closed, there is no public interest or shipper necessity in maintaining routes through Thalmann. The traffic in question, which is Seaboard originated or terminated traffic, can move equally as well, or better, over the Seaboard's own single line routes.

The Commission itself, in the very report of January 11, 1954 (Appendix A-7) found that the Seaboard's own single line routes were "presumably" satisfactory for the handling of perishable traffic and if satisfactory for that traffic we may also assume (as the Seaboard witnesses testified) that they are satisfactory for all other traffic, saying (page 24, post):

> "In addition to traffic over the Macon, Dublin & Savannah route via Savannah and Vidalia, the Seaboard now handles traffic to Atlanta, Birmingham, and beyond over routes through Everett, Ga., Savannah, Columbus and Montgomery. To Atlanta and Birmingham those routes are somewhat longer than the Seaboard-Coast Line route through either Jacksonville or Thalmann, but while the time in transit is not shown, they presumably are satisfactory for the handling of perishable traffic, since the Thalmann route has not attracted a large amount of Seaboard traffic."

The Seaboard's single line routes through Montgomery and Columbus for the traffic in question are actually not

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Finance Docket No. 16872, unreported, but indexed at 275 I. C. C. 810, for the abandonment by the Coast Line of a portion of its line of track between Brunswick, Ga., and Sessoms, Ga., on which the present interchange point, Thalmann, is located."

"somewhat longer" than the Coast Line's routes. Under the exception of Section 15(4)(a) of the Interstate Commerce Act[3] it would be necessary for the Commission, in opening new routes through Jacksonville, to find that the Seaboard's routes through Montgomery, Columbus, and Vidalia (Macon) were unreasonably long.

The fact is, however, that there is no direct testimony in the very full record before the Commission giving the relative mileages of the Seaboard and Coast Line routes. There are a number of maps in the record from which the comparative distances could be scaled, which will show that those Seaboard routes are not unreasonably long. Under those circumstances we feel it proper to state that, in fact, the Seaboard's routes through Montgomery and Columbus to Birmingham are actually shorter than the comparable Coast Line route and that the Seaboard's route through Vidalia (Macon) to Atlanta is only slightly longer than the Coast Line's route.

The Commission attempted to make the finding required by Section 15(4)(a) by finding that a route to Atlanta and Birmingham over the Seaboard's own rails through Hamlet, North Carolina (shown on Appendix C) would be unreasonably long.[4] There is, of course, no evidence that any of the

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[3] "• • • (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable route which could otherwise be established, • • •."

[4] Appendix A-7, p. 27; "It is significant that the defendant maintains through routes with numerous other carriers, through various junctions, which embrace substantially less than the entire line of the defendant's railroad between south Florida and Atlanta and Birmingham. It reaches Atlanta and Birmingham with its own rails, but there is no indication that its much longer single-line route through North Carolina moves any of the traffic thereto from Florida.

"By Section 15(4) we are forbidden to require any carrier, without its consent, to embrace in a through route substantially less than the entire length of its line between the termini of such

traffic in question moves to Atlanta and Birmingham over the Seaboard's own rails through Hamlet, and the Commission made no finding that the Seaboard's routes through Montgomery, Columbus and Vidalia (Macon) were unreasonably long.

The Commission's report of January 11, 1954 (Appendix A-7) likewise wholly fails to meet the requirements of Section 15(4)(b) of the Interstate Commerce Act,[5] and to the extent that its findings may purport to do so, they cannot be supported by the record.

The Coast Line produced only two shipper witnesses, in the hearings before the Commission. Those two witnesses were produced at a hearing on January 15, 1952, and no other shipper witnesses were produced at the further hearings, held on March 12, 13, 23, 24 and 25, 1953.

One of the shipper witnesses produced by the Coast Line was the traffic manager of the Dr. P. Phillips Company Cooperative, of Orlando, Florida. He did not testify that the Seaboard service was unsatisfactory, but said he wanted to continue to give the Coast Line business (Tr. 56).

The other shipper witness was the general traffic manager of the International Mineral and Chemical Corporation. He did not testify that the Seaboard service was unsatisfactory. His testimony was that he wanted a route with the Coast Line continued in order to carry out his company's "policy of distribution of tonnage" (Tr. 59).

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through route, unless the carrier's own line is unreasonably long or the route proposed is needed in order to provide adequate, and more efficient or more economic, service. The defendant does not attempt to show that its own line between south Florida and Atlanta and Birmingham would not be unreasonably long as compared with the Seaboard-Coast Line route. We find that it would be unreasonably long as compared with the Seaboard-Coast Line route with interchange at Jacksonville."

[5] "• • • (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic transportation • • •."

The Questions Presented Are Substantial.

We believe that the Court below has misconstrued and misapplied the decision of this Court in *Thompson* v. *United States*, 343 U. S. 549 (June 2, 1952). The Court below cited and quoted from that case as authority for the proposition that the existence of a through route was determined by the holding out by the carriers involved and the actual transportation of traffic at a through rate from and to the same origin and destination points.

The evidence showed, for example, shipments of canned goods moving via Thalmann from Lake Wales, Florida, to St. Louis, Missouri. The Court below said (Appendix A-1, p. 9), "The through route is already in effect via Thalmann and all that is being done is to establish a new point of interchange in lieu of Thalmann." The Court below made no mention of the fact that through routes for those shipments were also in effect through Montgomery, or Columbus, or Vidalia (Macon).

If the test adopted by the Court below was in fact the test of the existence of a through route the Commission's powers to require the establishment of new through routes at joint rates would be enormously broadened, in fact, the Commission's powers in that respect would be practically without limit. We think it unnecessary to elaborate upon the importance of correcting that erroneous determination of the test of the existence of a through route.

If we are incorrect in our construction of the *Thompson* case, the fact remains, apart from that case, that the route of movement determines the existence of the through route, not the fact that there are physical connections and the possibility of movement over many different and alternate lines.[6] The Seaboard and the Coast Line

[6] The Commission itself has long so recognized, and this Court also. Cf. *Beaman Elevator Co.* v. *Chicago & North Western Ry. Co.*, 155 I. C. C. 313 (May 7, 1929). *St. Louis S. W. R. Co.* v. *United States*, 245 U. S. 136 (November 12, 1917).

have *never* held themselves out as offering through service at joint rates *via Jacksonville,* for the traffic in question. We respectfully submit that the test of the existence of a through route, adopted by the Court below in finding the existence of such a route *via* Jacksonville, is contrary to the decision of this Court in *United States* v. *Missouri Pac. R. Co.,* 278 U. S. 269 (January 2, 1929), and every applicable or relevant decision of this Court since that date.

The case also presents the novel question as to the extent, if any, to which the Commission's power to authorize abandonments, enlarges its powers under Sections 15(3) and 15(4). That question is implicit in the reports of the Commission, in the opinion of the Court below, and is fairly comprehended within the questions presented as above set forth. If the Commission's power to authorize the abandonment authorizes it to require the continuance of existing through routes and joint rates by prescribing an alternate interchange point, without regard to the requirements and limitations of Section 15(4), it would appear that the Seaboard should have been a party to the abandonment proceeding and, in fact, was a necessary party, and that the present abandonment authority is invalid for that reason.

With respect to Section 3(4) of the Interstate Commerce Act[7] there is no showing that the Seaboard is not providing "all reasonable, proper and equal facilities for the interchange" at Jacksonville of the traffic in question, provided only that it move on combination rates, and there is no basis for a requirement that the Seaboard do something it is already doing. What the Coast Line wants is not merely interchange facilities at Jacksonville but joint rates

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[7] "All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and connecting lines, * * *."

through Jacksonville, but the providing of interchange facilities does not carry with it the requirement of establishing joint rates, and Section 3(4) will not support the latter requirement of the Commission's order. The Commission has found (Appendix A-7, p. 19):

> "There is at the present time a substantial amount of traffic interchanged by the parties at Jacksonville."

The traffic to which the Commission there referred was not the traffic in question, but there is no finding that the facilities afforded at Jacksonville for the interchange of the traffic in question are inadequate. On the contrary, the Commission found (Appendix A-7, p. 19):

> "The evidence warrants the conclusion that additional interchange facilities at Jacksonville would not be required to handle the amount of additional traffic which would flow through Jacksonville if the interchange for the traffic in issue were shifted from Thalmann to Jacksonville."

Any claim by the Coast Line that it will be prejudiced by the continued existence of routes with the Southern via Everett, under Section 3(4) or any other provision of the Act, should be answered, without more, by the fact that it is the Coast Line, not the Seaboard, that is proposing to close the present routes through Thalmann, and that the continuance of routes for the Coast Line to handle Seaboard originated and terminated traffic is unnecessary and of no economic interest to anyone except the Coast Line.

Assuming (a) that the effect of the Commission's order of July 30, 1954 (Appendix A-2) was to open a new through route, and (b) that the Commission's authority to authorize abandonments does not enlarge its powers under Sections 15(3) and 15(4), and (c) that Section 3(4) does not apply to support the Commission's order, the case presents sub-

stantial questions with respect to the Commission's power under Section 15(4).

The failure to meet the requirements of either clause (a) or clause (b) of Section 15(4) is pointed out above. The Court below (Appendix A-1, p. 11) found that the Commission's finding under clause (a) could be supported by "a glance at the maps showing these lines" wholly overlooking the fact that the short-haul prohibition of Section 15(4) applies to those portions of the Seaboard's railroad which lie "between the termini of such proposed route" and that it has no application to lines of the Seaboard running off in other directions and which do not lie between the termini of such proposed through route.

The failure to meet the requirements of Section 15(4)(b) of the Act is necessarily recognized (although not given effect) by the finding in the opinion of the Court below (Appendix A-1, p. 12) that:

> "Coast Line, in its brief, frankly admits that the shippers who testified before the Commission 'were not particularly concerned with the point of interchange' but that they 'urged the retention of through interline service between Seaboard and Coast Line comparable with the existing service.' The instant case, however, involves no shipper complaints; rather is it an operational dispute between two competing carriers. And, rather clearly, we think, the operational evidence here supports the Commission's findings as to the way the public interest points."

The public interest which Section 15(4)(b) is intended to serve cannot be founded upon "an operational dispute between two competing carriers," nor based upon "operational evidence." Cf. *Pennsylvania R. Co.* v. *United States*, 323 U. S. 588 (January 29, 1945).

To say that a dispute between two railroads, in which no shippers showed any real interest, in which the Commission itself has found that the Seaboard's long haul routes were "presumably" satisfactory, and in which no other public interest appears, will justify the findings required by clause (b) of Section 15(4) is to go far beyond the decision of this Court in *Pennsylvania R. Co.* v. *United States,* 323 U. S. 588 (January 29, 1945), and in practical effect would amount to a repeal of the short-haul prohibition.

We respectfully submit that the questions presented by this appeal are substantial and that they are of public importance.

February 9, 1955.

Respectfully submitted,

James B. McDonough, Jr.,
Counsel for Plaintiff-Appellant,
Seaboard Air Line Railroad
Company Building,
Plume and Granby Streets,
Norfolk 10, Virginia.

Charles T. Abeles,
Of Counsel.